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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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MAY 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Review of the Commission's) MM Docket No. 91-221
Regulations Governing)
Television Broadcasting)
)
Television Satellite Stations) MM Docket No. 87-8
Review of Policy and Rules)

TO: The Commission

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FURTHER COMMENTS OF
WESTINGHOUSE BROADCASTING COMPANY (GROUP W)

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EXECUTIVE SUMMARY

Since the Television Ownership Rules were last reviewed in 1984, the video marketplace has changed dramatically. Almost two-thirds of the viewing public now subscribe to cable television services. An expanding universe of new technology services ranging from Direct Broadcast Satellite to Video Dialtone Services are now available or on the immediate horizon. The competitive consequences of these new services are of immense consequences to the future of free and universal over-the-air television service to the American public.

Together with other television broadcasters, Group W has commissioned an extensive two-volume Economic Analysis of the Television Ownership Rules prepared under the direction of the distinguished economist, Bruce Owen. Organized along the same lines as the Further Notice of Rule Making, it provides the Commission with extensive economic and marketplace data concerning the rapidly changing video marketplace. In terms of following specific markets and concerns identified by the Commission, it shows that the phase out or relaxation are mandated in the public interest:

- The market for delivered video programming.
- The markets for local and national advertising.
- The video program production market.

- The marketplace for a diversity of program sources, content and ideas.

Based on this extensive analysis and Group W's experience as a television broadcaster for almost 50 years, the following changes in Television Ownership Rules will have no adverse impact on these markets and concerns:

- The Commission should now commit itself to the phase-out of all national ownership limits by the year 2000. The present 12-station cap should be immediately repealed. Consistent with the Commission's desire to proceed cautiously and avoid significant dislocations to the television industry, however, the 25% national audience cap should only be increased to 50% at this time, with annual 10% increases thereafter. This extended phase-out period will provide more than enough time for all segments of the television industry to adjust and for the Commission to monitor the impact of the gradual change.
- Current local ownership restrictions should be prudently relaxed through the following incremental changes.
 - o A change from the Grade B contour to the Grade A contour as the measure of determining prohibited overlap.

- o The permitted ownership of television stations in separate Designated Market Areas (DMAs), notwithstanding the presence of a degree of Grade A contour overlap.
- o The permitted ownership of a UHF and VHF (or 2 UHF) station combo in the top 25 markets.
- The immediate repeal of the radio-television cross-ownership rule. This rule unfairly discriminates against the combined radio/television station owner as it seeks to compete against non-combined owners in the burgeoning video and audio marketplaces.

In Group W's view, these relatively modest changes are essential to the future of free and universal over-the-air television in the new world of communications. By the year 2000, it is inconceivable that the Commission should still have regulations on the books that were largely fashioned at a time when over-the-air radio and television were the only video and audio services available to the public.

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TO: The Commission

FURTHER COMMENTS OF
WESTINGHOUSE BROADCASTING COMPANY (GROUP W)

Westinghouse Broadcasting Company ("Group W") hereby submits its further comments in response to the Commission's Further Notice of Proposed Rule Making, FCC 94-332, released January 17, 1995, in the above-referenced proceeding.

I. INTRODUCTION

The resolution of this proceeding is overdue. For almost four years, the Commission has been reviewing the impact of substantial changes in the video programming marketplace on its existing rules restricting the ownership of one facet of that marketplace, television stations. Group W has previously participated in both stages of this proceeding^{1/} and is pleased to submit its comments in

^{1/} See Comments of Westinghouse Broadcasting Company, Inc., filed November 21, 1991, in response to initial Notice of Inquiry, FCC 91-215, released August 7, 1991 (hereinafter "Notice of Inquiry"); and Comments of Westinghouse
(continued...)

response to the Commission's latest rulemaking proposals. As the licensee of major market television stations since 1948,^{2/} Group W has witnessed the television industry evolve from its infancy into a mature and highly diverse marketplace providing numerous viewing options for the American public. When Group W placed WBZ-TV on the air in 1948, for example, it was the first and only video service available in the Boston Metropolitan area and, indeed, New England. Now a multitude of video options are available including, in addition to far more television stations, a growing diversity of cable delivered, direct broadcast satellite (DBS) and wireless cable (MMDS) services.

Of these many video services, over-the-air television alone provides the American public with free and universal service. The unique role and importance of over-the-air television to the American public traditionally has served as a primary justification for the Commission's television ownership rules. Now, however, the Commission must also balance the adverse impact of these restrictions on the ability of free, over-the-air television to compete

^{1/}(...continued)

Broadcasting Company, Inc., filed August 24, 1992, in response to initial Notice of Proposed Rule Making, FCC 92-209, released June 12, 1992 (hereinafter "Initial Notice").

^{2/} Group W has operated Station WBZ-TV, Boston, MA, since 1948; Station KYW-TV, Philadelphia, PA, since 1953 (except for the period from 1956-1965); Station KPIX-TV, San Francisco, CA, since 1954; Station KDKA-TV, Pittsburgh, PA, since 1955; and Station WJZ-TV, Baltimore, MD, since 1957.

effectively in the burgeoning video marketplace. Ultimately, nothing less is at stake than the future of free, over-the-air television service to the American public.

Recognizing the sea changes which have occurred, the Further Notice seeks to analyze with precision ". . . the economic and diversity issues with respect to the various proposals to revise our national and local multiple ownership rules for television stations." Further Notice, ¶13. To this end, Group W has participated with other television broadcasters in the preparation of a comprehensive two-volume economic analysis of the television ownership rules which is being separately submitted.^{3/} This analysis was prepared by the firm of Economists Incorporated of Washington, D.C., under the direction of Bruce Owen, whose credentials are well known to the Commission.

This comprehensive study, organized along the same lines as the Further Notice, is directly responsive to the specific economic and diversity questions raised by the Commission. It provides the Commission with the specific economic and marketplace information necessary for the prompt resolution of this proceeding. For each of the

^{3/} An Economic Analysis of the Broadcast Television National Ownership, Local Ownership, and Radio Cross-Ownership Rules, May 17, 1995, Economists, Incorporated, Washington, D.C. (hereinafter "Joint Economic Analysis").

ownership rules under review, these comments will present Group W's views and analysis, organized in the same marketplace fashion.

II. EXISTING NATIONAL OWNERSHIP LIMITS SHOULD BE PHASED OUT

Current television ownership rules limit an entity to the ownership of 12 television stations nationally, reaching an aggregate of no more than 25% of the national audience.^{4/} These limits were adopted in 1984, at which time the Commission increased the seven station limit which had been in effect for over 30 years and adopted, for the first time, an alternative national audience cap limit.^{5/} In that proceeding, it was Group W that first proposed the 25% audience cap.^{6/}

As reflected in the Further Notice and Joint Economic Analysis, however, industry conditions have changed substantially since that time. Among other changes:

^{4/} For minority-owned stations, the limit is 14 stations and 30% of the national audience.

^{5/} Amendment of Multiple Ownership Rules, 100 FCC 2d 17 (1984), Order on Reconsideration, 100 FCC 2d 74 (1985). In this proceeding, the Commission initially had adopted only the 12-station limit, subject to an automatic sunset provision six years thereafter. The automatic sunset provision was eliminated on reconsideration in order to avoid a "precipitous and potentially disruptive restructuring of the broadcast industry." Further Notice, ¶ 100.

^{6/} See Amendment of Multiple Ownership Rules, supra, 100 FCC 2d at 79.

- The number of over-the-air television stations has grown by 30%. In 1984, there were 1,180 commercial and non-commercial television stations. Now there are 1,520. Further Notice, ¶25.
- Compared to three national over-the-air television networks in 1984, there are now four full and two developing national networks.
- Cable television subscribership has increased 73% since 1984. Almost two-thirds of all television households now subscribe to cable television.^{7/}
- The number of national and regional cable networks has more than tripled. In 1984, there were 47 national cable networks. Regional cable networks were non-existent. Now, there are 109 national networks and 43 regional services.^{8/}
- Direct Broadcast Satellite Service (DBS) was a figment in the mind of future technologists in 1984. Now, two DBS systems requiring an investment of hundreds of million dollars are operational and two additional systems are to be introduced in the near future. Considering only the two existing systems, 5.5 million households are expected to subscribe by the end of 1996.^{9/}
- SMATV, MMDS (wireless cable) and Backyard Dish subscribership has grown by almost 500% since 1984 to 3.9 million subscribers.^{10/}
- Households using VCRs have increased 500% since 1984. Approximately 89% of all television households (84.5 million households) now have a VCR.^{11/}

^{7/} Joint Economic Analysis, Appendix A, pp. 1-2.

^{8/} Joint Economic Analysis, Appendix Table A-2.

^{9/} Joint Economic Analysis, Appendix A, pp. 11-13.

^{10/} Joint Economic Analysis, Appendix A, Table A-5.

^{11/} Joint Economic Analysis, Appendix A, pp. 13-15.

- Video Dialtone (VDT) services, completely unknown in 1984, are now on the verge of being introduced. Counting only the VDT applications now on file at the Commission, VDT service may soon be available to over 8.5 million households.^{12/}

The evidence presented is more than sufficient to justify an immediate repeal of all national ownership restrictions. At the same time, however, Group W is appreciative of the concerns of some television station owners and the Commission's desire to proceed in an incremental manner ". . . in order to avoid significant dislocation in the television industry." Further Notice, ¶100. For this reason, subject to one important modification, Group W supports the Commission's proposal to repeal the 12 station limit and proceed to modify the existing 25% audience cap limit through incremental increases over a predetermined period.

Our one proviso is that the incremental increases not stop at 50%, as has been suggested by the Commission. Further Notice, ¶101. There is no empirical or other evidence for this arbitrary limit. Rather, we suggest the following incremental approach:

- An immediate cap increase from 25% to 50%. This will provide a reasonable degree of immediate flexibility for those broadcasters now near the

^{12/} Further Notice, ¶27.

25% limit, while at the same time maintaining a relatively conservative cap.^{13/}

- The phase-out of all remaining cap restrictions over a five-year period through automatic annual increases in the cap of 10% per year. This extended phase-out period, which would end in the year 2000, will provide more than enough time for all segments of the television industry to adjust and for the Commission to monitor the impact of the gradual change.

The prompt phase-out of all national ownership restrictions is mandated by the record before the Commission.

A. The Market For Video Delivered Programming Will Not Be Adversely Affected

As recognized in the Further Notice, the market for video delivered programming is a local market. This local market will not be affected by the phase-out of all national ownership limits because that action ". . . will not by itself increase or decrease the number of separately owned

^{13/} As noted in Table 10, p. 76, of the Joint Economic Analysis, the reach of several broadcast groups now approaches the 25% cap. The audience reach of Group W's existing five stations is 9.6%. Proposed acquisitions for which applications are pending would increase Group W's audience reach to 12.8%.

broadcast TV stations in the video program delivery market."

Further Notice, ¶83. Delivered video programming marketplace considerations, i.e., the competition of local stations to attract viewers, provides no competitive justification whatsoever for national ownership restrictions.^{14/}

Moreover, from the local competitive standpoint, the level of competition is significantly increasing with the advent of a diversity of new communications technologies. While recognizing the growing competitive significance of these new technologies, such as DBS, wireless cable and VDT, the Notice, nonetheless, tentatively concludes that for purposes of current economic analysis, only ". . . commercial broadcast television operators, public broadcast television station operators, and cable system operators [will be considered] to be economically relevant alternative suppliers of delivered video programming." Notice, ¶29. This is far too restrictive a market definition -- "It is the presence of these alternative delivery systems and their ability to rapidly take dissatisfied viewers away from broadcast television that is important, not their present scale of operation."^{15/}

^{14/} Joint Economic Analysis, p. 80.

^{15/} Joint Economic Analysis, p. 11.

Except for VDT, a wired service, the Commission has allocated massive amounts of valuable spectrum to these new services on the premise that they will provide significant competitive choices for the American viewing public. Having done so, it makes no sense to conclude in this proceeding that the competitive significance of these new technologies should be completely disregarded.

This is particularly true given the Commission's inclination, supported by Group W, to adopt a gradual approach to the phase-out of national ownership restrictions. To the extent that the current market penetration of these new technologies may be low, this is a transitory factor which will change significantly over the next several years.^{16/} If one or more of these technologies prove to be a "pie-in-the-sky" hope, this can be taken into account in the periodic review of the phase-out process.

The Further Notice also raises the issue of the extent to which paid services should be considered a substitute to free, over-the-air services in light of their different economic costs to the consumer. Further Notice, ¶26. This question has already been answered by the marketplace. While there are obviously differences to the consumer, the

^{16/} Similarly, it makes no sense to completely exclude the competitive consequences of VCR use in the overall marketplace assessment. See Joint Economic Analysis, pp. 11-12.

very substantial extent to which consumers now subscribe to and watch cable services show that there is a high degree of substitutability.^{17/} For the Commission, the more important question should be the extent to which the present ownership restrictions hinder the ability of the free television industry to compete effectively against the growing number of paid services offered by new technologies and cable video services, all of which are significantly more consolidated in their ownership.

B. The Market For Advertising Will Not Be Adversely Affected

As recognized in the Further Notice, this issue must be reviewed in the context of both local and national advertising marketplace considerations. For local markets, the Commission's tentative conclusion that a relaxation of national ownership limits will have no ". . . deleterious effect on the different local advertising markets" (Further Notice, ¶87) is solidly supported by the Joint Economic Analysis. Individual stations located in different markets do not compete against each other in the sale of local advertising. Furthermore, as the individual station operates in a competitive market, there is no potential for

^{17/} See Joint Economic Analysis, pp. 9-11.

a station to use market power in one market to influence improperly another market.^{18/}

Nationally, because local stations are not the primary providers of advertising, there is no adverse competitive impact on the national advertising marketplace. Further Notice, ¶86. This also is solidly confirmed by the Joint Economic Analysis:

"While group ownership has no adverse effect on competition in advertising, it has pro-competitive effects to the extent there are efficiencies from group ownership. . . . Even if ownership of additional stations gave a company a larger share of the relevant national advertising market, in light of the number of suppliers of national spot advertising and the many substitutes for national spot advertising, there is no danger that a station group owner would have market power in the sale of national advertising."^{19/}

Indeed, to the extent group ownership increases the ability of the group owner to compete in the national advertising marketplace, competition is benefitted.

The following table reproduced from the Joint Economic Analysis (Table 4, p. 28) calculates the relative concentration of alternative national advertising product "markets" based on the widely-accepted Herfindahl-Hirschman Index (HHI) measure of economic concentration for purposes of analyzing mergers. As noted in the Further Notice, under

^{18/} Joint Economic Analysis, p. 82.

^{19/} Joint Economic Analysis, p. 81.

current DOJ/FTC merger guidelines, generally a market with an HHI below 1,000 is considered unconcentrated and not subject to further antitrust scrutiny. Between 1,000 and 1,800, the market is considered moderately concentrated. Over 1,800, the market is considered to be highly concentrated. As with any statistical measuring tool, an HHI Index is not the ultimate determinant. In cases where the HHI is over 1,800, other factors may lead to a finding of no adverse competitive consequences.^{20/}

**HHIs FOR ALTERNATIVE NATIONAL ADVERTISING
PRODUCT "MARKETS," 1993**

| Product "Market" | National Sales | Capacity |
|----------------------------------------------------------------------------------------------------|-----------------------|-----------------|
| Broadcast TV network, syndication and cable network | 1,666 | 1,666 |
| National video* | 850 | 719 |
| National video and radio | 753 | 508 |
| National video, radio, magazines and newspapers | 352 | 498 |
| National video, radio, magazines, newspapers, yellow pages and outdoor | 329 | 444 |
| National video, radio, magazines, newspapers, yellow pages, outdoor, direct mail and miscellaneous | 134 | 198 |

*National video includes broadcast TV network, syndication, cable network, broadcast national spot and cable national spot.

^{20/} For a more detailed explanation of the Herfindahl-Hirschman Index methodology and the manner in which it is used as a tool to measure economic concentration, see Joint Economic Analysis, pp. 3-6.

Looking at the national video market alone, which includes national spots sold by stations, the levels of concentration (850 HHI based on national sales and 719 HHI based on capacity^{21/}) are currently low under DOJ/FTC merger guidelines. This is particularly significant as these calculations already aggregate the sale of national spot advertising to an assumed universe of seven national station representatives having equal shares of the broadcast television spot advertising marketplace.^{22/} Viewed another way, assuming the sale of national spot advertising were to be concentrated in seven national station groups (a level of concentration which would be virtually impossible to achieve), the national video advertising marketplace standing alone would still have a low level of concentration (719 HHI based on capacity) under the DOJ/FTC merger guidelines.

^{21/} Consistent with the approach of the Further Notice, these measures are based on revenues. The "National Sales" measure is based only on television stations' national spot advertising sales, whereas "Capacity" includes both national and local sales. The "Capacity" measure is more realistic as advertising spots are completely fungible between the local and national marketplace. The latter, thus, measures the full capacity of the local station to participate in the national advertising marketplace. See Joint Economic Analysis, pp. 24-25.

^{22/} Joint Economic Analysis, p. 26. If it is assumed that a national spot representative must reach 75% of the national households, a theoretical maximum of eleven independent national representatives is possible. The assumed universe of seven national representatives, therefore, depicts a relatively concentrated number of national representatives.

For purposes of considering national advertising marketplace issues, the Commission's tentative decision to exclude national spot market sales by local television stations and cable systems is wrong. Further Notice, ¶37. If this were the correct economic approach (which Group W does not believe to be the case), then increased group ownership of television stations and group spot sales obviously could have no impact on the national advertising marketplace. As this is not an economically realistic assumption,^{23/} however, the Commission must take the competitive consequences of the national spot marketplace into full account. And from this standpoint, as indicated above, the economic evidence clearly indicates that expanded group ownership will have pro-competitive consequences.

Furthermore, it is not correct to consider video advertising as ". . . an economically distinct segment of the national advertising market" for purposes of all economic analysis. Further Notice, ¶36. While there are obvious differences as to the degree to which other national advertising media serve as direct substitutes, the overall economic evidence shows a sufficient degree of substitut-

^{23/} See Joint Economic Analysis, pp. 20-22 ("For spot advertising to constrain network advertising, it is sufficient that there be a significant number of advertisers using network advertising for whom spot is a close substitute."). Furthermore, as a television station operator for more than four decades, Group W is quite familiar with the direct competitive relationship between the network and national spot advertising marketplaces.

ability to require the Commission to take non-video national advertising alternatives into account.^{24/} When other non-video national advertising alternatives are considered, the relative level of concentration of the national advertising marketplace is extremely low. But even assuming otherwise, the level of concentration is in an acceptable range. As the Joint Economic Analysis concludes:

" . . . regardless of how the relevant product market for national advertising is defined, concentration is moderate (HHI between 1,000 and 1,800) or low (HHI below 1,000) under the standards of the DOJ/FTC Merger Guidelines. In a properly defined national advertising market, the HHI is well under 1,000."^{25/}

C. The Video Program Product Market Will Not Be Adversely Affected

Even assuming that television stations face no other competition in the purchase of programming, the Further Notice correctly concludes that " . . . the current national limits could be relaxed substantially before a competitive concern would arise." Further Notice, ¶89. On the basis of the current 14 station limit, the Further Notice calculates an HHI market concentration of 121. If all national

^{24/} See Joint Economic Analysis, pp. 22-24; and Appendix D. This Appendix presents extensive evidence, based on interviews with persons having first-hand experience in the advertising marketplace, demonstrating the extent to which the marketplace considers various video and non-video advertising alternatives to be substitutable for each other.

^{25/} Joint Economic Analysis, pp. 28-29.

ownership limits were lifted, the maximum concentration that could be achieved would raise this HHI calculation to 831, a level which is well within the definition of an unconcentrated market under DOJ/FTC merger guidelines.^{26/}

The market for video programming, however, is not that limited. In addition to over-the-air television stations, a diversity of other video program services compete for programming to serve their audiences. Considering this broader market for national programming rights, the existing level of concentration is even lower.^{27/} As calculated in the Joint Economic Analysis, the present HHI among firms buying national rights is 738.^{28/} Thus, the impact of the elimination of all national television ownership restrictions and possible emergence of new entities in the national marketplace would have no impact on the overall marketplace. As concluded by the Joint Economic Study, "the issue of monopsony power in the purchase of national rights to video programs does not provide a rationale for the national ownership rule."^{29/}

^{26/} Joint Economic Analysis, p. 61. The average market has 8.66 full-power commercial stations. Assuming the ownership of no more than one station in a given DMA, the above calculation represents the fewest number of owners that would result nationally, given the present universe of television stations.

^{27/} Joint Economic Analysis, pp. 82-83.

^{28/} Joint Economic Analysis, Appendix Table G-7.

^{29/} Joint Economic Analysis, p. 83.

D. Diversity Of Program Service Will Be Enhanced

There is clear evidence that the group ownership of television stations provides for a greater diversity of service and viewpoint for the viewing public. The Commission's findings previously made in relaxing national ownership limits in 1984 are equally true today:

- Group owners tend to do "a superior job of responding to viewer demand for news. . ." than do non-group owned stations.^{30/}
- ". . . group owners broadcast more issue-oriented programming than non-group-owned stations. . . ." ^{31/}
- Group-owned stations are more likely than independent stations to editorialize.^{32/}

As pointed out in the Joint Economic Analysis, the reasons for this superior performance flow from the economic efficiencies inherent in the ownership of more than one television station. The efficiencies achieved, both through the operation of multiple stations and the development of programming for stations, include the following:^{33/}

^{30/} Amendment of Multiple Ownership Rules, supra, 100 FCC 2d at 31.

^{31/} Id. at 20.

^{32/} Id. at 32. See also Joint Economic Analysis, pp. 78-80.

^{33/} Joint Economic Analysis, pp. 64-74.

- Sharing of corporate overhead expenses ranging from research departments, to personnel with special expertise, to personnel and equipment used to cover news events.
- Economies in purchasing capital equipment, products, and services, ranging from studio equipment, to research services, to syndicated programming.
- Greater ability to attract and retain talented employees.
- Efficiencies from operating an internal market for used equipment, which is transferred among stations.
- Ability of successful owners to share their superior management and their experience and expertise with stations in additional local markets.
- Reducing costs of negotiating affiliations with programming services.
- Reducing costs and overcoming problems faced by stations in contracting for the sale of national spot advertising. In a number of cases, larger station groups can act as their own national sales representatives.
- Reducing costs and overcoming problems faced by stations in the purchase of rights to syndicated programs and the development of original programs.
- The availability of greater resources and expertise in the improvement of station facilities and the construction of new UHF stations.
- Reducing transactions costs associated with the distribution of programming, including the network affiliation process and the clearance of network programs.
- Reducing risks associated with the production of programs and the provision of programming services, including the development of new programs and programming services.

- Facilitating entry of new networks. Both ownership of O&Os and the ability to obtain carriage commitments from station groups owned by others has facilitated the entry of new networks, including the Fox network, the United Paramount Network, and the Warner Brothers WB Network.

These efficiencies are confirmed by Group W's experience in the operation of multiple stations for more than four decades. For example:

- Equipment - Group W routinely negotiates group purchases of a variety of technical equipment including tape stock, newsroom computer systems, cameras, and ENG equipment, in order to obtain the lowest possible price. Group W is currently negotiating an exclusive purchase agreement with a major supplier of broadcast antennas which will result in significant costs savings. To take advantage of cutting edge newsroom technology, Group W currently also is negotiating a bulk purchase agreement for the purchase of tapeless digital editing facilities and cameras.
- Programming - In many cases, Group W has purchased syndicated product for several of its stations at one time on a favorable basis. The efficiencies of group purchases are critical in attracting and keeping high quality programming in the broadcast marketplace rather than on cable or other

alternative distribution mechanisms. Furthermore, it gives the individual station significant input into the development of new syndicated programs to meet the needs of the local television audience. For example, the Group W and CBS television station groups have recently joined together to create an innovative live news and information program called "Day and Date," designed for local station afternoon use. Local stations have had significant input in the development phase in order to shape this program to meet local needs.

- News - The news organizations of Group W's five television stations work together to share news stories, promotion and production techniques, and ENG equipment to cover breaking stories. With a larger station group, the opportunity to create satellite networks to circulate stories of interest to various markets is also greater. Group W is also considering a centralized art department where top line creative personnel, using state of the art equipment, could create the highest quality graphics for use by a number of stations.